

(4) Notice to the individual of his or her right to appeal the denial through the Component appeal procedure within 60 calendar days; and

(5) The title or position and address of the Privacy Act appeals official for the Component.

(d) *DoD Component appeal procedures.* Establish internal appeal procedures that, as a minimum, provide for:

(1) Review by the head of the Component or his or her designee of any appeal by an individual from a denial of access to Component records.

(2) Formal written notification to the individual by the appeal authority that shall:

(i) If the denial is sustained totally or in part, include as a minimum:

(A) The exact reason for denying the appeal to include specific citation to the provisions of the Act or other statute, this part, Component instructions or the CFR upon which the determination is based;

(B) The date of the appeal determination;

(C) The name, title, and signature of the appeal authority;

(D) A statement informing the applicant of his or her right to seek judicial relief.

(ii) If the appeal is granted, notify the individual and provide access to the material to which access has been granted.

(3) The written appeal notification granting or denying access is the final Component action as regards access.

(4) The individual shall file any appeals from denial of access within no less than 60 calendar days of receipt of the denial notification.

(5) Process all appeals within 30 days of receipt unless the appeal authority determines that a fair and equitable review cannot be made within that period. Notify the applicant in writing if additional time is required for the appellate review. The notification must include the reasons for the delay and state when the individual may expect an answer to the appeal.

(e) *Denial of appeals by failure to act.* A requester may consider his or her appeal formally denied if the authority fails:

(1) To act on the appeal within 30 days;

(2) To provide the requester with a notice of extension within 30 days; or

(3) To act within the time limits established in the Component's notice of extension (see paragraph (d)(5) of this section).

(f) *Denying access to OPM records held by DoD Components.* (1) The records in all systems of records maintained in accordance with the OPM government-wide system notices are technically only in the temporary custody of the Department of Defense.

(2) All requests for access to these records must be processed in accordance with the Federal Personnel Manual (5 CFR parts 293, 294, 297 and 735) as well as the applicable Component procedures.

(3) When a DoD Component refuses to grant access to a record in an OPM system, the Component shall instruct the individual to direct his or her appeal to the appropriate Component appeal authority, not the Office of Personnel Management.

(4) The Component is responsible for the administrative review of its denial of access to such records.

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#### § 310.32 Amendment of records.

(a) *Individual review and correction.* Individuals are encouraged to review the personnel information being maintained about them by DoD Components periodically and to avail themselves of the procedures established by this part and any other Component regulations to update their records.

(b) *Amending records.* (1) An individual may request the amendment of any record contained in a system of records pertaining to him or her unless the system of record has been exempted specifically from the amendment procedures of this part under paragraph (b) of § 310.50, subpart F. Normally, amendments under this part are limited to correcting factual matters and not matters of official judgment, such as performance ratings, promotion potential, and job performance appraisals.

(2) While a Component may require that the request for amendment be in writing, this requirement shall not be

used to discourage individuals from requesting valid amendments or to burden needlessly the amendment process.

(3) A request for amendment must include:

(i) A description of the item or items to be amended;

(ii) The specific reason for the amendment;

(iii) The type of amendment action sought (deletion, correction, or addition); and

(iv) Copies of available documentary evidence supporting the request.

(c) *Burden of proof.* The applicant must support adequately his or her claim.

(d) *Identification of requesters.* (1) Individuals may be required to provide identification to ensure that they are indeed seeking to amend a record pertaining to themselves and not, inadvertently or intentionally, the record of others.

(2) The identification procedures shall not be used to discourage legitimate requests or to burden needlessly or delay the amendment process. (See paragraph (c) of § 310.30).

(e) *Limits on attacking evidence previously submitted.* (1) The amendment process is not intended to permit the alteration of evidence presented in the course of judicial or quasi-judicial proceedings. Any amendments or changes to these records normally are made through the specific procedures established for the amendment of such records.

(2) Nothing in the amendment process is intended or designed to permit a collateral attack upon what has already been the subject of a judicial or quasi-judicial determination. However, while the individual may not attack the accuracy of the judicial or quasi-judicial determination under this part, he or she may challenge the accuracy of the recording of that action.

(f) *Sufficiency of a request to amend.* Consider the following factors when evaluating the sufficiency of a request to amend:

(1) The accuracy of the information itself; and

(2) The relevancy, timeliness, completeness, and necessity of the recorded information for accomplishing an assigned mission or purpose.

(g) *Time limits.* (1) Provide written acknowledgement of a request to amend within 10 working days of its receipt by the appropriate systems manager. There is no need to acknowledge a request if the action is completed within 10 working days and the individual is so informed.

(2) The letter of acknowledgement shall clearly identify the request and advise the individual when he or she may expect to be notified of the completed action.

(3) Only under the most exceptional circumstances shall more than 30 days be required to reach a decision on a request to amend. Document fully and explain in the Privacy Act case file (see paragraph (p) of this section) any such decision that takes more than 30 days to resolve.

(h) *Agreement to amend.* If the decision is made to grant all or part of the request for amendment, amend the record accordingly and notify the requester.

(i) *Notification of previous recipients.* (1) Notify all previous recipients of the information, as reflected in the disclosure accounting records, that an amendment has been made and the substance of the amendment. Recipients who are known to be no longer retaining the information need not be advised of the amendment. All DoD Components and federal agencies known to be retaining the record or information, even if not reflected in a disclosure record, shall be notified of the amendment. Advise the requester of these notifications.

(2) Honor all requests by the requester to notify specific federal agencies of the amendment action.

(j) *Denying amendment.* If the request for amendment is denied in whole or in part, promptly advise the individual in writing of the decision to include:

(1) The specific reason and authority for not amending;

(2) Notification that he or she may seek further independent review of the decision by the head of the Component or his or her designee;

(3) The procedures for appealing the decision citing the position and address of the official to whom the appeal shall be addressed; and

(4) Where he or she can receive assistance in filing the appeal.

(k) *DoD Component appeal procedures.* Establish procedures to ensure the prompt, complete, and independent review of each amendment denial upon appeal by the individual. These procedures must ensure that:

(1) The appeal with all supporting materials both that furnished the individual and that contained in Component records is provided to the reviewing official, and

(2) If the appeal is denied completely or in part, the individual is notified in writing by the reviewing official that:

(i) The appeal has been denied and the specific reason and authority for the denial;

(ii) The individual may file a statement of disagreement with the appropriate authority and the procedures for filing this statement;

(iii) If filed properly, the statement of disagreement shall be included in the records, furnished to all future recipients of the records, and provided to all prior recipients of the disputed records who are known to hold the record; and

(iv) The individual may seek a judicial review of the decision not to amend.

(3) If the record is amended, ensure that:

(i) The requester is notified promptly of the decision;

(ii) All prior known recipients of the records who are known to be retaining the record are notified of the decision and the specific nature of the amendment (see paragraph (i) of this section); and

(iii) The requester is notified as to which DoD Components and federal agencies have been told of the amendment.

(4) Process all appeals within 30 days unless the appeal authority determines that a fair review cannot be made within this time limit. If additional time is required for the appeal, notify the requester, in writing, of the delay, the reason for the delay, and when he or she may expect a final decision on the appeal. Document fully all requirements for additional time in the Privacy Case File. (See paragraph (p) of this section)

(l) *Denying amendment of OPM records held by DoD Components.* (1) The records in all systems of records controlled by the Office of Personnel Management (OPM) government-wide system notices are technically only temporarily in the custody of the Department of Defense.

(2) All requests for amendment of these records must be processed in accordance with the OPM Federal Personnel Manual (5 CFR parts 293, 294, 297 and 735). The Component denial authority may deny a request. However, the appeal process for all such denials must include a review by the Assistant Director for Agency Compliance and Evaluation, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415.

(3) When an appeal is received from a Component's denial of amendment of the OPM controlled record, process the appeal in accordance with the OPM Federal Personnel Manual (5 CFR parts 293, 294, 297 and 735) and notify the OPM appeal authority listed above.

(4) The individual may appeal any Component decision not to amend the OPM records directly to OPM.

(5) OPM is the final review authority for any appeals from a denial to amend the OPM records.

(m) *Statements of disagreement submitted by individuals.* (1) If the reviewing authority refuses to amend the record as requested, the individual may submit a concise statement of disagreement setting forth his or her reasons for disagreeing with the decision not to amend.

(2) If an individual chooses to file a statement of disagreement, annotate the record to indicate that the statement has been filed (see paragraph (n) of this section).

(3) Furnish copies of the statement of disagreement to all DoD Components and federal agencies that have been provided copies of the disputed information and who may be maintaining the information.

(n) *Maintaining statements of disagreement.* (1) When possible, incorporate the statement of disagreement into the record.

(2) If the statement cannot be made a part of the record, establish procedures to ensure that it is apparent from the

records that a statement of disagreement has been filed and maintain the statement so that it can be obtained readily when the disputed information is used or disclosed.

(3) Automated record systems that are not programed to accept statements of disagreement shall be annotated or coded so that they clearly indicate that a statement of disagreement is on file, and clearly identify the statement with the disputed information in the system.

(4) Provide a copy of the statement of disagreement whenever the disputed information is disclosed for any purpose.

(o) *DoD Component summaries of reasons for refusing to amend.* (1) A summary of reasons for refusing to amend may be included with any record for which a statement of disagreement is filed.

(2) Include in this summary only the reasons furnished to the individual for not amending the record. Do not include comments on the statement of disagreement. Normally, the summary and statement of disagreement are filed together.

(3) When disclosing information for which a summary has been filed, a copy of the summary may be included in the release, if the Component desires.

(p) *Privacy Case Files.* (1) Establish a separate Privacy Case File to retain the documentation received and generated during the amendment or access process.

(2) The Privacy Case File shall contain as a minimum:

- (i) The request for amendment or access;
- (ii) Copies of the DoD Component's reply granting or denying the request;
- (iii) Any appeals from the individual;
- (iv) Copies of the action regarding the appeal with supporting documentation which is not in the basic file; and
- (v) Any other correspondence generated in processing the appeal, to include coordination documentation.

(3) Only the items listed in paragraphs (p)(4) and (s) of this section may be included in the system of records challenged for amendment or for which access is sought. Do *not* retain copies of unamended records in the basic record

system if the request for amendment is granted.

(4) The following items relating to an amendment request may be included in the disputed record system:

- (i) Copies of the amended record.
- (ii) Copies of the individual's statement of disagreement (see paragraph (m) of this section).
- (iii) Copies of Component summaries (see paragraph (o) of this section).
- (iv) Supporting documentation submitted by the individual.

(5) The following items relating to an access request may be included in the basic records system:

- (i) Copies of the request;
- (ii) Copies of the Component's action granting total access.

NOTE.—A separate Privacy case file need not be created in such cases.

- (iii) Copies of the Component's action denying access;
- (iv) Copies of any appeals filed;
- (v) Copies of the reply to the appeal.

(6) There is no need to establish a Privacy case file if the individual has not cited the Privacy Act (reference (b)), this part, or the Component implementing instruction for this part.

(7) Privacy case files shall not be furnished or disclosed to anyone for use in making any determination about the individual other than determinations made under this part.

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### § 310.33 Reproduction fees.

(a) *Assessing fees.* (1) Charge the individual only the direct cost of reproduction.

(2) Do not charge reproduction fees if copying is:

- (i) The only means to make the record available to the individual (for example, a copy of the record must be made to delete classified information); or

(ii) For the convenience of the DoD Component (for example, the Component has no reading room where an individual may review the record, or reproduction is done to keep the original in the Component's file).

(3) No fees shall be charged when the record may be obtained without charge